

Filed

BEFORE THE KANSAS STATE BOARD OF PHARMACY
900 SW JACKSON, STE. 560
TOPEKA, KS 66612-1597

JAN 30 2008
KANSAS STATE
Board of Pharmacy

IN THE MATTER)

OF)

Case No. 07-57

WALGREENS PHARMACY,)
RESPONDENT)
_____)

CONSENT ORDER

NOW, on this 30th day of January 2008, the captioned case comes before the Kansas State Board of Pharmacy (Board) by agreement of Respondent, Walgreens Pharmacy, for the purpose of resolving this matter. The Board appears by and through Paul J. Morrison, Attorney General of Kansas, and Derenda J. Mitchell, Assistant Attorney General. Walgreens Pharmacy does not appear in person, but provides its authorized signature by agreement. The Board, upon mutual consent of the Respondent, finds as follows:

1. Respondent currently holds a license to operate a pharmacy in the State of Kansas, license number 2-09668.
2. Respondent operates a pharmacy at 11021 Shawnee Mission Parkway, Shawnee, Kansas 66203-3515, store number 05263.
3. The Board has jurisdiction over Respondent and is authorized to enter into this Consent Order.
4. Respondent is found to have operated a pharmacy in such a manner that violations of the provisions of the Pharmacy Act of the State of Kansas, K.S.A. 65-1626

et seq., and of the rules and regulations of the Board, K.A.R. 68-1-1a et seq., have occurred in connection therewith.

5. A consumer complained to the Respondent that his prescription for Prozac was instead filled with Lexapro. According to the consumer, his prescription label read Prosac.

6. The consumer told Respondent that when he had the prescription tested by a toxicologist that the toxicologist confirmed that the prescription was filled with the wrong medicine.

7. The consumer also advised the pharmacy that the medicine was destroyed.

8. The Kansas Pharmacy Compliance Inspector, Melissa Martin, investigated the complaint.

9. She asked Respondent whether counseling were provided to the consumer.

10. During counseling, the consumer is usually asked whether the customer prefers tablets or capsules.

11. The consumer was not counseled.

12. The inspector asked Mr. Jason Bleich, R.Ph., the pharmacist-in-charge, whether counseling were provided.

13. Mr. Bleich responded that it was his and Walgreen's policy to counsel on all new prescriptions.

14. Mr. Bleich could not confirm whether this consumer refused the offer for counseling.

15. The inspector also asked Respondent for a copy of the incident report.

16. Mr. Bleich reported that an incident report had been prepared by the pharmacy, but he could not locate it for the inspector.

17. Mr. Bleich asked Ms. Rebecca Hamid, R.Ph, the pharmacist who spoke with the consumer, to complete the form. Ms. Hamid was the pharmacist in charge at the time of the incident. Mr. Bleich succeeded her as pharmacist in charge. The form was faxed to the inspector by Respondent the same day as the inspector's visit to the pharmacy. A copy of the incident report is marked as Exhibit A and incorporated herein as though recited in full. The consumer's name and identifying information have been redacted for privacy considerations.

18. K.A.R. 68-7-12b(b) sets forth the requirements for completing incident reports.

19. Respondent failed to complete the incident report as required by K.A.R. 68-7-12b(b).

20. K.A.R. 68-2-20(a)(5) requires a licensed pharmacist to "personally offer to counsel each patient or the patient's agent with each new prescription dispensed, . . .".

21. The prescription for the consumer was a new prescription.

22. K.A.R. 68-2-20(b) requires that the pharmacist shall personally counsel by the performance of a personal offer which shall include "verbal counseling."

23. By failing to counsel by making a verbal offer of counseling, Respondent violates K.A.R. 68-2-20(a)(5) and K.A.R. 68-2-20(b).

24. Violations of K.A.R. 68-2-20(a)(5) and K.A.R. 68-2-20(b) are violations of 65-1625(a)(8) requiring compliance with the rules and regulations of the Board.

25. K.S.A. 65-1627(a)(8) provides for discipline for violations of any of the statutes or regulations of the Board.

26. K.S.A. 65-1627(e) authorizes the Board to revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy when the pharmacy has been operated in such a manner that violations of the provisions of the Pharmacy Act or of the rules and regulations of the Board occurred in connection with the operation of the pharmacy.

27. In addition, the Board may issue a civil fine for violation of the provisions K.S.A. 65-1627 in an amount not to exceed \$5,000 for each violation.

28. In order to avoid the expense of a full adjudicatory hearing and to avoid the possibility of discipline greater than that issued herein, Respondent voluntarily enters into this agreement.

29. Respondent understands and waives all rights to notice, a hearing, an adjudication of facts and law, or any manner of review or reconsideration of the findings made herein.

30. Respondent further agrees and waives any right to review, reconsideration, appeal, or modification of any findings.

31. The Board retains the right to discipline Respondent for violations of the Kansas Pharmacy Act and any regulations promulgated thereunder.

32. Respondent consents to this Consent Order and understands that if it is approved, this Consent Order becomes a final order of the Board, without rights of review, reconsideration, appeal or modification or to a formal notice of hearing.

33. In order to comply with this Consent Order, Respondent must first sign and return the Consent Order with the signature of an authorized representative of Respondent affixed to the Consent Order to be received at the office of Assistant Attorney General Derenda J. Mitchell no later than noon on January 11, 2008.

34. Respondent also agrees to provide payment within 30 days of the date of the hearing approving this order to pay fines in the amount of \$500 for its violations of K.S.A. 65-1627(a)(8) and K.A.R. 68-7-12b pertaining to incident reports; and \$500 for its violations of K.S.A. 65-1627(a)(8), K.A.R. 68-2-20(a)(5) and K.A.R. 68-2-20(b); for a total of \$1000.

35. In the event the Board does not approve this consent order, the Board retains jurisdiction of the matter. Respondent agrees that the Board may continue to conduct proceedings to determine the discipline to which the Respondent is subject, and Respondent waives any objection to the Board's hearing of Respondent's discipline upon disapproval of the consent order for any reason.

WHEREFORE, THIS VOLUNTARY DISCIPLINE IS HEREBY MADE THE FINAL ORDER OF THE BOARD effective on the date indicated in the certificate of service.

Entered in Shawnee County, Kansas, January 30, 2007.


Chair, Kansas Board of Pharmacy